

FIFTY-SIXTH LEGISLATURE
SECOND SESSION

PROPOSED AMENDMENT DIRECTED TO A COMMITTEE

January 19, 2024

Mr. Chair:

I propose to the HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMITTEE the following amendments to

HOUSE BILL 178

1. On page 1, line 14, before the period, insert "; RENAMING THE DEPARTMENT OF GAME AND FISH AS THE WILDLIFE DEPARTMENT; RENAMING THE STATE GAME COMMISSION AS THE STATE WILDLIFE COMMISSION; AMENDING STATUTORY POLICY; EXPANDING THE MANAGEMENT OF WILDLIFE; ADDING DEFINITIONS; PROVIDING REPORTING REQUIREMENTS; PROVIDING TRANSFERS; REPEALING SECTION 17-2-2 NMSA 1978 (BEING LAWS 1937, CHAPTER 23, SECTION 1)".

2. On page 1, between lines 16 and 17, insert:

"SECTION 1. Section 17-1-1 NMSA 1978 (being Laws 1921, Chapter 35, Section 1, as amended) is amended to read:

"17-1-1. DECLARATION OF POLICY.--It is the purpose of [this act] Chapter 17 NMSA 1978 and the policy of the state [of New Mexico to provide an adequate and flexible system for the protection of the game and fish of New Mexico and for their use and development for public recreation and food supply and to provide for their propagation, planting, protection, regulation and conservation to the extent necessary to provide and maintain an adequate supply of game and fish within the state of New Mexico] to provide for the conservation and management of the state's wildlife as a public trust resource with intrinsic and ecological value, as well as for the benefit, use, food supply and nonconsumptive enjoyment of all."

SECTION 2. Section 17-2A-1 NMSA 1978 (being Laws 1996, Chapter 89, Section 3) is recompiled as Section 17-1-1.1 NMSA 1978 and is amended to read:

"17-1-1.1. DEFINITIONS.--For the purposes of Chapter 17 NMSA 1978:

A. "commission" or "state game commission" means the state wildlife commission;

B. "department" or "department of game and fish" means the wildlife department;

C. "director", "warden", "state warden", "state game warden" or "state game and fish warden" means the director of the wildlife department;

~~[A.]~~ D. "hunt code" means a description used to identify and define the species, weapon type and time frame authorized for a specific hunt;

~~[B.]~~ E. "outfitter" or "guide" means a person who advertises or holds [~~himself~~] the person's self out to the public for hire or is employed or accepts compensation for providing, within the unit where a hunt occurs, facilities, equipment or services for hunting activities; provided, however, that "outfitter" or "guide" does not include a person who only cooks, cuts wood or performs other comparable or incidental duties not directly related to hunting activities; and

~~[C.]~~ F. "unit" means a geographically bound area in the state that is used to manage game species."

3. On page 4, line 9, strike "2" and insert in lieu thereof "11".

4. On page 4, line 12, strike "the effective date of this 2024 act" and insert in lieu thereof "January 1, 2025".

5. On page 5, between lines 21 and 22, insert:

"SECTION 4. Section 17-1-26 NMSA 1978 (being Laws 1931,

Chapter 117, Section 2, as amended) is amended to read:

"17-1-26. RULEMAKING POWER.--

A. The [~~state game~~] commission is [~~hereby~~] authorized and directed to make [~~such~~] rules [~~and regulations~~] and establish [~~such~~] service as it may deem necessary to carry out all the provisions and purposes of [~~this Act~~] Chapter 17 NMSA 1978 and all other acts relating to [~~game and fish, and in making such rules and regulations and in providing when~~] wildlife.

B. The rules may include, as applicable, when, where, by what means and to what extent, if at all, [~~and by what means game animals, birds and fish~~] wildlife may be hunted, taken, captured, killed, possessed, released, bartered, sold, purchased, [and] shipped and imported into or exported from the state. [~~game and fish~~]

C. In making rules, the commission shall evaluate and give due [regard to the zones of temperatures and to the distribution, abundance, economic value and breeding habits of such game animals, birds and fish.

~~The state game commission is hereby authorized to spend such reasonable amounts as in its judgment is desirable and necessary annually, from their funds not otherwise needed, for the eradication of predatory animals] consideration to a species' population size and trends, migration patterns, availability of suitable habitat response to changes in climate conditions, conservation actions necessary to sustain healthy populations and ecosystems and any other factors, natural or human-driven, that are judged to affect the health of a species or a species' ecosystem."~~

SECTION 5. Section 17-1-28 NMSA 1978 (being Laws 1939, Chapter 19, Section 1) is amended to read:

"17-1-28. ASSENT TO ACT OF CONGRESS.--The state of New Mexico hereby assents to the provisions of the act of congress of the United States of America entitled "An act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes", approved September [7] 2, 1937 (Public Law Number 415, 75th Congress), also known as the federal Pittman-

Robertson Wildlife Restoration Act, and the [~~state game~~] commission is hereby authorized and directed to perform all [~~such~~] acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects as defined by [~~said~~] that act of congress and in compliance with [~~said~~] that act and rules and regulations promulgated by the [~~secretary of agriculture~~] United States secretary of the interior thereunder."

SECTION 6. Section 17-1-29 NMSA 1978 (being Laws 1939, Chapter 19, Section 2) is amended to read:

"17-1-29. DISTRIBUTION OF FEDERAL FUNDS.--The [~~state game~~] commission is authorized to receive any [~~moneys~~] money to which the state [~~of New Mexico~~] may become entitled under the [~~aforsaid act of congress~~] federal Pittman-Robertson Wildlife Restoration Act. Such [~~moneys~~] money, when received, [~~to~~] shall be deposited with the state treasurer [~~of the state of New Mexico~~] to the credit of the [~~state~~] game protection fund, expended for the purpose designated and withdrawn [~~and~~] as other [~~moneys are~~] money is withdrawn from the [~~state~~] game protection fund."

SECTION 7. A new section of the Wildlife Conservation Act is enacted to read:

"[NEW MATERIAL] WILDLIFE TO BE PROTECTED--MANAGEMENT.--

A. In addition to other species defined in statute, the commission is authorized to extend management and protection by rule or policy to any species of wildlife not protected by statute pursuant to Chapter 17 NMSA 1978.

B. When determining whether and how to protect a species of wildlife, the commission shall evaluate and give due consideration to:

- (1) whether a species qualifies as a species of greatest conservation need;
- (2) the science-based reasons for protection of a species; and
- (3) the rules and management programs that would

potentially accompany protected status.

C. The department is not required to respond to wildlife nuisance incidents unless:

(1) the commission, in its own discretion, adopts a policy or rule to do so; or

(2) as otherwise provided by law.

D. As used in this section, "wildlife" means a nondomestic mammal, bird, reptile, amphibian, fish or invertebrate species, including a living animal, or any part, egg, spawn, offspring or the dead body or parts thereof."

SECTION 8. Section 17-2-38 NMSA 1978 (being Laws 1974, Chapter 83, Section 2, as amended) is amended to read:

"17-2-38. DEFINITIONS.--As used in the Wildlife Conservation Act:

A. "commission" means the state [~~game~~] wildlife commission;

B. "director" means the director of the wildlife department [~~of game and fish~~];

C. "ecosystem" means a system of living organisms and their environment;

D. "endangered species" means any species of fish or wildlife whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:

(1) the present or threatened destruction, modification or curtailment of its habitat;

(2) overutilization for scientific, commercial or sporting purposes;

(3) the effect of disease or predation;

(4) other natural or man-made factors affecting its prospects of survival or recruitment within the state; or

(5) any combination of the foregoing factors.

The term may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the federal Endangered Species Act of 1973 as endangered species; provided that the commission adopts those lists in whole or in part. The term [~~shall~~] does not include any species covered by the provisions of 16 U.S.C. 1331 through 1340 (1971) [~~and shall not include~~] or any species of the class insecta determined by the director to constitute a pest whose protection under the Wildlife Conservation Act would present an overwhelming and overriding risk to man;

E. "investigation" means a process pursuant to Subsections B through L of Section 17-2-40 NMSA 1978 undertaken whenever the director suspects that a species may be threatened or endangered and [~~which~~] that consists of a formal review of existing data and studies and may include additional field research to determine whether a species is threatened or endangered;

F. "land or aquatic habitat interests" means interests in real property or water rights consisting of fee simple title, easements in perpetuity, time certain easements, long-term leases and short-term leases;

G. "management" means the collection and application of biological information for the purposes of establishing and maintaining a congruous relationship between individuals within species and populations of wildlife and the carrying capacity of their habitat. The term includes the entire range of activities that constitutes a full scientific resource program [~~of~~], including [~~but not limited to~~] research, census, law enforcement, propagation, acquisition or maintenance of land or aquatic habitat interests appropriate for recovery of the species; improvement and maintenance, education and related activities; [~~or~~] and protection and regulated taking;

H. "recovery plan" means a designated program or methodology reasonably expected to lead to restoration and

maintenance of a species and its habitat;

I. "peer review panel" means an advisory panel of scientists, each of whom possesses expertise relevant to the proposed investigation and at least one of whom is a wildlife biologist, convened to review the scientific methodology for collection and analysis of data by a researcher based on commonly accepted scientific peer review;

J. "species" means any species or subspecies;

K. "substantial public interest" means a nonfrivolous claim indicated by a broad-based expression of public concern;

L. "take" or "taking" means to harass, hunt, capture or kill any wildlife or attempt to do so;

M. "threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range in New Mexico; the term may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the federal Endangered Species Act of 1973 as threatened species; provided that the commission adopts the list in whole or in part; and

N. "wildlife" means [~~any~~] a nondomestic mammal, bird, reptile, amphibian, fish [mollusk or crustacean] or invertebrate species, including a living animal, or any part, egg, spawn, [~~or~~] offspring or the dead body or parts thereof."

SECTION 9. A new section of the Wildlife Conservation Act is enacted to read:

"[NEW MATERIAL] SPECIES OF GREATEST CONSERVATION NEED--
DEFINITION--REPORTING.--

A. For the purposes of Chapter 17 NMSA 1978, "species of greatest conservation need" means species existing within New Mexico that are subject to one or more of the following factors:

(1) species that have experienced substantial long-

term declines in habitat or population, known as declining species;

(2) species in which some aspect of their life histories and ecology makes them disproportionately susceptible to decline, including concentration to small areas during migration or hibernation, low reproductive rates, susceptibility to disease, inability to respond to changing climate conditions, habitat loss, wildfire and overexploitation for anthropogenic purposes, known as vulnerable species;

(3) species that are limited to New Mexico, known as endemic species;

(4) species that have populations geographically isolated from other populations of the same species and are thereby susceptible to local decline or extirpation, known as disjunct species; or

(5) species that are crucial to the integrity and the functioning of their ecosystems and that may represent more value to conservation of biological diversity than the size of their population or their distribution would suggest, known as keystone species.

B. The wildlife department shall report annually by November 1 to the appropriate interim legislative committee and publish on the department's website data collected on species of greatest conservation need and the use of state and federal funds for the support and recovery of species of greatest conservation need."

SECTION 10. Section 17-5-4 NMSA 1978 (being Laws 1939, Chapter 178, Section 4, as amended) is amended to read:

"17-5-4. [~~STATE GAME COMMISSION TO ADMINISTER ACT RULES AND REGULATIONS~~] CONFLICT OF AUTHORITY--TAKING OF BOBCATS.--~~[The state game commission is authorized and directed to administer the provisions of Sections 17-5-1 through 17-5-9 NMSA 1978 and to make such rules and regulations and establish such service as it may deem necessary to carry out all the provisions and purposes of those sections. In making such rules and regulations and providing when and by what means fur-bearing animals may be hunted, taken,~~

~~captured, possessed or killed, the state game commission shall give due regard to the zones of temperatures and to the distribution, abundance, economic value and breeding habits of such animals.~~
Provided] Nothing in Sections 17-5-1 through 17-5-9 NMSA 1978 shall interfere with the authority granted to the president of New Mexico state university under Sections 77-15-1 through 77-15-5 NMSA 1978 or [shall] prevent livestock producers without a permit from the taking of bobcats that are doing damage to livestock."".

6. On page 5, line 25, strike "1" and insert in lieu thereof "3".

7. On page 6, line 2, strike "act" and insert in lieu thereof "section".

8. On page 6, lines 2 and 3, strike "the effective date of this act" and insert in lieu thereof "December 31, 2024".

9. On page 6, line 4, strike "appointed on the effective date of this act" and insert in lieu thereof "beginning January 1, 2025".

10. On page 6, between lines 12 and 13, insert:

"SECTION 12. TEMPORARY PROVISION--NAME CHANGE--TRANSFER OF FUNCTIONS, PERSONNEL, MONEY, APPROPRIATIONS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.--

A. The department of game and fish is renamed as the "wildlife department".

B. The state game commission is renamed as the "state wildlife commission".

C. On July 1, 2025, all:

(1) functions, personnel, money, appropriations, records, furniture, equipment, supplies and other personal and real property of the department of game and fish are transferred to the wildlife department;

(2) agreements and contractual obligations of the department of game and fish are binding on the wildlife department;

(3) references in law to the department of game and fish shall be deemed to be references to the wildlife department;

(4) functions, personnel, money, appropriations, records, furniture, equipment, supplies and other personal and real property of the state game commission are transferred to the state wildlife commission;

(5) agreements and contractual obligations of the state game commission are binding on the state wildlife commission; and

(6) references in law to the state game commission shall be deemed to be references to the state wildlife commission.

D. On July 1, 2025, statutory references in Chapter 17 NMSA 1978 to:

(1) the "department of game and fish" or "department" shall be construed to be references to the wildlife department;

(2) the "state game commission" or "commission" shall be construed to be references to the state wildlife commission; and

(3) the "director", "warden", "state warden", "state game warden" or "state game and fish warden" shall be construed to be references to the director of the wildlife department.

E. Rules of the department of game and fish shall be rules of the wildlife department until amended or repealed.

F. Rules of the state game commission shall be rules of the state wildlife commission until amended or repealed.

SECTION 13. REPEAL.--Section 17-2-2 NMSA 1978 (being Laws 1937, Chapter 23, Section 1) is repealed."

11. On page 6, lines 13 and 14, strike "The effective date of the provisions of this act is January 1, 2025." and insert in lieu thereof:

"A. The effective date of the provisions of Sections 3 and

11 of this act is January 1, 2025.

B. The effective date of the provisions of Sections 1, 2, 4 through 10, 12 and 13 of this act is July 1, 2025."

12. Renumber sections to correspond to these amendments.

Respectfully submitted,

Matthew McQueen